

Background Checks Executive Summary

State and local agencies and private businesses that employ drivers to serve special needs populations in Washington State are subject to numerous background check requirements. These requirements are a result of state laws, policies of the programs that fund transportation, local jurisdictional regulations, and internal business practices. When coordinating trips between agencies, these background check requirements and processes are complex, confusing, duplicative, costly, time consuming, and sometimes inaccurate, resulting in systematic inefficiencies. These issues frequently result in:

- Higher than necessary administrative costs to all organizations involved in background checks, and
- Barriers to coordination in the areas of driver recruitment, driver training, and driver sharing among organizations.

Background

During their 2007 planning process, the Pierce County Coordinated Transportation Coalition (PCCTC) identified a shortage of drivers for transits, school districts, private carriers, and social service programs. A preferred solution was to build a qualified pool of drivers in which all the agencies could use for finding and employing drivers.

The key barrier preventing the Coalition from implementing this solution was the fact that each of the agencies providing trips has different procedures for processing background checks on potential drivers, as well as different ways of using the results of the background checks in the hiring process.

Given the statewide significance of this problem, the Community Transportation Association of the Northwest (CTA-NW) and the Agency Council on Coordinated Transportation (ACCT) provided a technical assistance grant to PCCTC.

PCCTC used the funds to hire a consulting firm to conduct the study and present findings to PCCTC. The PCCTC steering committee reviewed the findings and developed recommendations. These recommendations were presented to the PCCTC Executive Interagency Governing Assembly and ACCT.

PCCTC, CTA-NW, and ACCT have similar missions to promote the coordination of publicly funded transportation. Each pays particular attention to the provision of special needs transportation for elders,

youth, people with disabilities, and people with low incomes. PCCTC focuses on developing coordinated transportation services and programs to achieve increased efficiencies resulting in greater service delivery for more people in Pierce County. CTA-NW supports the funding and provision of transportation resources through trainings, technical assistance, grants, outreach, and education. ACCT promotes transportation coordination through oversight and direction at the State level and provides a forum for discussing issues and initiating change.

Project Purpose

The purpose of this study was to gather information and provide recommendations on how to best attain an efficient and effective background check process and common standards for drivers of seniors, children, people with disabilities and the general public. The study was conducted in Pierce County but recognized as potentially applicable statewide.

Key Findings

This study consulted with 25 organizations involved with background checks either as regulators, resources, or employers. The diversity of the organizations involved with their own missions results in divergent interpretations of background check requirements as well as the application of processes and standards. The key observations of this research are as follows:

Definition – The definition of background checks means different things to different agencies. For some agencies, it means the Washington State Patrol's (WSP) criminal history check. For others, it means the more in depth Federal Bureau of Investigation (FBI) criminal history check. Some agencies also include driving records and social service registers as part of the background check definition, while others do not.

Lack of Consistency – Variations across the agencies include: how background checks are conducted, which types are conducted, the type of information gathered, what is considered a disqualifier, how the results are interpreted, who makes the final decision, and how often post-employment checks occur or if they are even required.

Availability of Information – In order to receive the results of FBI background checks, agencies must have authorization from State

statute approved by the Attorney General.¹ The only agencies with such authority in Washington State are the Department of Social and Health Services (DSHS)² and the Office of Superintendent of Public Instruction (OSPI) (school districts, educational service districts, the state school for the deaf, the state school for the blind, and their contractors who will have regularly scheduled unsupervised access to children).³ These authorized agencies are not permitted to share the results of the FBI background checks. Likewise, all agencies are prohibited from sharing Washington Driver Abstracts. Some agencies think they are prohibited from sharing background check results originating from WSP's online database Washington Access to Criminal History (WATCH). However, this is considered public information and can be shared. Some agencies are hesitant about sharing information because of perceived liability issues.

Safety Gaps – DSHS and OSPI both have sophisticated, professionally managed background check systems in place. However, both the DSHS and OSPI systems could benefit from components of the other. While OSPI benefits from WSP notification of convictions involving crimes against children,⁴ the OSPI system does not have access to DSHS social service registers.⁵ DSHS, on the other hand, does not currently require disqualifications for traffic offenses whereas OSPI does.

Duplication – Efforts are often duplicative when transportation providers or brokers are responsible for providing transportation for multiple agencies and serving multiple population groups. A different background check process may be required by each agency and for each population group. This can result in a driver undergoing multiple background checks and being allowed to transport some population groups for some agencies but not for other agencies.

Accountability – Due to liability concerns, agencies refrain from documenting clear and detailed policies regarding background checks. Federal and State regulating agencies provide general guidelines, however the ultimate decision of which type of background check to use and how to interpret the results is usually left to the discretion of a single employee within the hiring entity.

¹ 28 U.S.C. §534, Public Law 92-544.

² RCW 74.15.030

³ RCW 28A.400.303

⁴ RCW 43.43.845

⁵ The social service registers contain findings that are not considered criminal such as violations of licensing requirements or ethics standards, reports on misconduct, and complaints from patients/clients. These findings do not meet the definition of a crime, but they might result in provider censures, fines, and/or suspensions by the boards that govern the profession. Each professional board or governing body keeps its own data and allows access based on its own criteria. Child Protective Services, Adult Protective Services, and the Department of Health all keep social service registers.

Time Factors – For those agencies without access to the OSPI or DSHS process of conducting background checks, the process to receive an FBI check can require a significant amount of time, often resulting in an applicant moving on to other employment as they become impatient with the long wait for approval or in their being hired prior to the results of a full background check being received by the hiring agency. For individuals requesting their own records, the FBI informs them to allow approximately 16 to 18 weeks for processing.

Inaccuracies – Agencies with access to the OSPI or DSHS processes get faster, more accurate information because of their access to extensive databases, the support of WSP in getting good fingerprints, and their use of electronic exchange of information. Agencies that don't use those systems rely on the individual driver applicants to take fingerprints, submit background check requests, and provide unaltered documents. This can lead to results that are not a match for the intended driver, incomplete, altered, or for only one of a number of aliases that a driver uses.

Similar Efforts – In January 2007, the legislatively-created Joint Task Force on Criminal Background Check Processes provided eight recommendations to improve the state's criminal background check processes. However, the recommendations were not adopted by the legislature.⁶ On an agency level, DSHS adopted one of the Task Force recommendations and developed an internal task force, the Background Check Advisory Group (BCAG), working on standards that can be adopted by DSHS as a whole and applied to all administrations.

Recommendations

While this project began with a desire to build a qualified pool of drivers from which Pierce County agencies could draw, the Coalition now believes that more groundwork must be accomplished in order to achieve this goal. The Coalition recommends that Pierce County, ACCT, and CTA-NW work together to first improve the background check process and information sharing, and then tackle the more contentious issue of developing a common set of driver standards for background checks. Once an efficient and effective system is in place, perhaps multiple agencies agreeing on a common set of standards for background check disqualifiers will become a more likely reality. Table 1 provides a summary of the Coalition's recommendations.

⁶ The only resulting legislation was ESSB 5774 which requires the state to conduct background checks on prospective foster and adoptive parents, kinship care providers, and any other adult living in the home. It also specifies the background check process to use.

Table 1. Summary of Recommendations

What	How	Who	When
Enable more information sharing	Advocate for Washington State legislation authorizing more agencies direct access to FBI background check results	CTA-NW with support of PCCTC	January 2008
Feasibility study for centralized clearinghouse	Cost/benefit analysis, address liability concerns, identify staffing and technology needs, research training needs, and identify location to house clearinghouse	ACCT	Summer 2008
Leverage current efforts	Participate on DSHS Background Check Advisory Group (BCAG) and stay abreast of Washington State Patrol <i>Rap Back</i> program	ACCT	Immediately
Common disqualifying criteria for drivers	Recommend to ACCT disqualifying lists dependant upon the vulnerability of the passengers	PCCTC	2008

Process Improvements

While the Coalition believes there is merit in the State developing a centralized clearinghouse for background checks with access to state and federal criminal records, social service registers, and driving records, they are also concerned that the resources and time it would take for that to be accomplished would delay Pierce County in achieving their coordinated transportation goals in a timely manner. As a result, the Coalition recommends taking action on two separate approaches.

Recommendation 1. Request CTA-NW to pursue Washington State legislation which authorizes more agencies to directly receive the results of FBI background checks for perspective

drivers, similar to the enabling statutes for Washington's schools⁷ and parts of DSHS.⁸

Recommendation 2. Request ACCT to study the development of a centralized statewide clearinghouse with access to state and federal criminal records, social service records and driving records for background checks of drivers. This work should include:

1. Development of requirements for a centralized clearinghouse
2. Identification of the costs and benefits of a centralized clearinghouse
3. Assessment of the feasibility of implementation

Common Standards

This research did not find a clear consensus regarding a common set of disqualifying standards for drivers. The Coalition agrees that, in concept, the creation of one standard is preferable for the safety and security of all passengers. However, the Coalition recognizes that reaching consensus on a single list of background check disqualifiers that apply to all circumstances for all agencies is unrealistic at this time. Therefore, the Coalition recommends:

Recommendation 3. Request ACCT to participate on the DSHS task force known as the Background Check Advisory Group (BCAG) and stay abreast of the development of the WSP *Rap Back* program.⁹

Recommendation 4. The Coalition should develop and recommend to ACCT disqualifying criteria for drivers. While working toward a single standard for all drivers, the Coalition should develop two or three disqualifying criteria lists based upon the vulnerability of the passengers.

⁷ RCW 28A.400.303

⁸ RCW 74.15.030

⁹ *Rap Back* would retain fingerprints on file allowing WSP to notify employers if employees commit crimes after employment.

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